

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re ANADARKO PETROLEUM
CORPORATION SECURITIES
LITIGATION

§ Civil Action No. 4:20-cv-00576
§ The Honorable Charles R. Eskridge III
§ CLASS ACTION
§ Magistrate Judge Christina A. Bryan

PLAINTIFFS' MOTION TO SEAL

Plaintiffs respectfully file herewith their May 31, 2024 letter and exhibits thereto in response to Defendants' May 17, 2024 letter challenging the production of certain documents as outside the scope of the Court's March 31, 2023 waiver finding (ECF 233) ("Plaintiffs' Response").

I. PRELIMINARY STATEMENT

Plaintiffs' Response references and attaches discovery material designated by Defendants as "Confidential" or "Highly Confidential." Plaintiffs take no position as to whether the material is properly designated as such but submit this Motion in accordance with the terms of the protective order in this case (ECF 80).¹

Prior to filing this Motion, counsel for Plaintiffs met and conferred with counsel for Defendants about this Motion. Defendants did not agree to public filing.

II. STATEMENT OF FACTS

Plaintiffs incorporate by reference their recitation of the relevant facts in Plaintiffs' Response concurrently filed herewith. *See* Plaintiffs' Response at 1-5.

III. NATURE AND STAGE OF PROCEEDINGS

Plaintiffs incorporate by reference their recitation of the nature and stage of proceedings in Plaintiffs' Response concurrently filed herewith. *See* Plaintiffs' Response at 1-5.

IV. ISSUES REQUIRING RESOLUTION

Whether portions of Plaintiffs' Response and exhibits thereto should be filed under seal or on the public docket.

¹ Plaintiffs reserve the right to challenge the confidentiality designations of these materials at a later date.

V. LEGAL STANDARD

The public has a “general right to inspect and copy public records and documents, including judicial records and documents.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 (1978); *see also* Court Procedures of Hon. Charles R. Eskridge III, §12(b) (“A presumption exists as to public access to judicial records. The filing of any pleading, brief, or supporting material under seal is disfavored.”). “Excessive secrecy . . . undercuts the public’s right of access and thus undermines the public’s faith in our justice system.” *Binh Hoa Le v. Exeter Fin. Corp.*, 990 F.3d 410, 421 (5th Cir. 2021). The decision of whether to allow public access to court records is left to the district court’s discretion. *Nixon*, 435 U.S. at 599. In exercising this discretion, the court “must balance the public’s common law right of access against the interests favoring nondisclosure.” *Kozlowski v. Buck*, 2021 WL 4973710, at *1 (S.D. Tex. Oct. 25, 2021) (quoting *S.E.C. v. Van Waeyenbergh*, 990 F.2d 845, 848 (5th Cir. 1993)).

VI. ARGUMENT

Judge Gilmore entered the Protective Order on June 25, 2021. ECF 80. The Protective Order provides, in relevant part:

If Protected Material² is to be included in any papers filed with the Court, such papers shall be labeled “Confidential-Subject to Protect Order” and filed under seal in accordance with the Court’s Local Rules and CM/ECF procedures. Protected Material filed under seal must be kept under seal until further order of the Court. Parties that file a pleading or other paper that includes Protected Material under seal must also file on the public record a version of the pleading or other paper from which the Protected Material has been redacted.

² As defined therein, Protected Material includes “any Discovery Material that is designated as ‘CONFIDENTIAL’ or ‘HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY.’” ECF 80, ¶2.14.

Id., ¶13.3.

Plaintiffs' Response references and attaches the following materials designated in discovery as either "Confidential" or "Highly Confidential":

Exhibit 1: APC-00002563-APC-00002812;

Exhibit 2: Excerpts of the August 24, 2022 Deposition Transcript of Patrick McGrievy;

Exhibit 3: Exhibit 252 to the August 24, 2022 Deposition Transcript of Patrick McGrievy; and

Exhibit 4: Excerpts of the November 2, 2022 Deposition Transcript of Mark L. Zajak.

Through their designations, Defendants claim that these documents contain sensitive personal or commercial information. ECF 80, ¶5.1. Pursuant to the Protective Order, Plaintiffs are therefore required to request the sealing of Plaintiffs' Response along with its exhibits. Plaintiffs take no position in this filing as to whether these designations are sufficient to overcome the public's presumptive right of access to judicial documents or otherwise warrant sealing the attached documents. Instead, Plaintiffs bring this Motion only to comply with the terms of the Protective Order. Plaintiffs reserve all their rights.

VII. CONCLUSION

Plaintiffs filed this Motion only to comply with the terms of the Protective Order and take no position as to whether Plaintiffs' Response and its attached exhibits should be withheld from the public with respect to this filing.

DATED: May 31, 2024

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing on all counsel of record who have appeared in this matter via the Court's CM/ECF system on this, the thirty-first day of May, 2024.

s/ Rachel L. Jensen
RACHEL L. JENSEN